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QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

Letter dated 7 October 1993 from the Permanent Representative of Ukraine to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the text of the draft International Convention on the status and safety of the personnel of the United Nations force and associated civilian personnel (see annex).

I would be grateful if you have the text of the present letter and its annex circulated as a document of the General Assembly at its forty-eighth session under agenda item 152.

(Signed) Victor H. BATIOUK
Ambassador
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Annex

DRAFT INTERNATIONAL CONVENTION ON THE STATUS AND SAFETY OF THE PERSONNEL OF THE UNITED NATIONS FORCE AND ASSOCIATED CIVILIAN PERSONNEL: PROPOSAL SUBMITTED BY UKRAINE

PREAMBLE

The States Parties,

Reiterating their earnest wish to see peace prevail among peoples,

Recalling that every State has the duty, in conformity with the relevant norms of international law, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the Charter of the United Nations,

Acknowledging the vital importance of the involvement of the personnel of the United Nations force and associated civilian personnel in preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian operations,

Conscious of the existing arrangements for ensuring the safety of the personnel of the United Nations force and associated civilian personnel, as well as of the steps taken by the principal organs of the United Nations in this regard,

Convinced that deployment of the United Nations peace-keeping operations is an integral component of the United Nations peace efforts which enhance the effectiveness of the United Nations in the maintenance of international peace and security,

Bearing in mind that increasing activities of the United Nations in the field of preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian operations require provision of extensive human, financial, and material resources for the Organization,

Appealing to all States in whose territory the personnel of the United Nations force and associated civilian personnel are deployed in connection with the mandate adopted by the United Nations Security Council, and to all parties concerned, to provide comprehensive support aimed at facilitating the conduct of an operation, and urging them to respect and guarantee the safety of those personnel,

Stressing the need for adequate protection of the personnel participating in preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian operations in accordance with the norms and principles of international law,

Have agreed on the following:

PART I

GENERAL PROVISIONS

Article 1

General principles and scope

1. The States Parties undertake to respect and to ensure the respect for the present Convention in all circumstances.

2. In cases not covered by the present Convention or by other international agreements, the personnel of the United Nations force and associated civilian personnel remain under the protection of universally recognized principles of international law, in particular, norms of international humanitarian law.

3. The present Convention shall apply in the cases of settlement of armed conflicts between two or among several States Parties which threaten international peace and security and in which the personnel of the United Nations force and associated civilian personnel are involved in accordance with the decision of the Security Council.

4. The present Convention shall also apply to a non-international conflict within a State Party when such conflict runs the risk of developing into an international one, or when representative authorities of a State Party have requested the United Nations Security Council to deploy in its territory the United Nations peace-keeping operation.

5. Unless it is explicitly stipulated otherwise, the provisions of the present Convention shall apply exclusively to the area where the United Nations peace-keeping operation is deployed.

6. If one of the parties to a conflict is not a State Party to the present Convention, the States Parties shall nevertheless remain bound by its provisions in their relations.

Article 2

Definitions

For the purposes of the present Convention:

(a) "United Nations peace-keeping operation" means the deployment of a United Nations presence in the area of conflict in accordance with the mandate approved by a resolution of the Security Council, aimed, inter alia, at prevention, maintaining or restoring international peace and security, exclusively in the common interest of the international community, disengaging the conflicting parties, creating conditions for the peaceful settlement of a conflict, monitoring a cease-fire and compliance with peace agreements, as well as for rendering humanitarian assistance to the civilian population in the area of deployment, it being understood that the United Nations peace-keeping

operation shall be conducted on the request or with the consent of the parties concerned;

(b) "Personnel of the United nations force" means a contingent of the United Nations personnel, participating in the United Nations peace-keeping operation, including military personnel and/or military observers contributed by Member States on the request of the Secretary-General and with the approval of the Security Council of the United Nations for carrying out a mandate approved by the Security Council for a specific operation, as well as civilian police personnel and civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists, etc., provided by Member States;

(c) "Associated civilian personnel" means all personnel deployed or stationed in an area of a peace-keeping operation by a specialized agency or other organization or programme of the United Nations system to carry out activities in connection with the performance of a mandate approved by the Security Council, as well as all persons deployed or stationed in an area by any other humanitarian organization or agency to carry out activities pursuant to an arrangement with the United Nations relating to the performance of a mandate approved by a resolution of the Security Council.

Article 3

Identification

The United Nations shall take appropriate measures to make the personnel of the United Nations force and associated civilian personnel as well as buildings and equipment identifiable when they are exclusively destined for carrying out a mandate approved by the Security Council, namely:

(a) The United Nations flag shall be hoisted in the headquarters, camps or other premises, areas of stationing of the personnel of the United Nations force and associated civilian personnel in the country where the United Nations peace-keeping operation is conducted;

(b) Ground-, water- and air-transportation vehicles of the personnel of the United Nations force and associated civilian personnel shall be marked by the distinctive United Nations emblem and reported to the Government of a State in whose territory the Untied Nations peace-keeping operation is conducted;

(c) Personnel of the United Nations force and associated civilian personnel shall at all times carry the distinctive emblem on its uniform, which also shall be reported to the Government of a State in whose territory the United Nations peace-keeping operation is conducted. In cases when part of the territory is occupied, such information shall be reported to the administration exercising actual authority over that part of the territory;

(d) Military personnel and civilian police personnel when executing official duties shall wear national military or police uniform;

(e) Each State Party, as well as a party to a conflict, shall endeavour to adopt and implement methods and procedures which will make it possible to identify the personnel of the United Nations force and associated civilian personnel and transports which use the distinctive emblem;

(f) In an area where fighting is taking place or is likely to take place, the personnel of the United Nations force and associated civilian personnel should be identified by the distinctive emblem and an identity card certifying their international status.

PART II

STATUS OF THE PERSONNEL OF THE UNITED NATIONS FORCE AND ASSOCIATED CIVILIAN PERSONNEL

Article 4

Respect for international character

The Government of a State Party in whose territory the United Nations peace-keeping operation is conducted or the administration exercising actual authority over the territory in question and/or the area of the operation shall respect the exclusive international character of the personnel of the United Nations force and associated civilian personnel.

Article 5

Privileges and immunities of the personnel of the United Nations force and associated civilian personnel

1. Personnel of the United Nations force and associated civilian personnel shall have the right of unimpeded entry and exit to and from a State in whose territory the United Nations peace-keeping operation is conducted. For the purposes of such entry or exit, personnel of the United Nations force and associated civilian personnel require only an identity document issued by the Special Representative/Force Commander. Excepted shall be the cases of initial entry when an identity document issued by the competent authorities of a State Party shall be accepted.

2. Existing national passport and visa regulations, as well as immigration formalities, shall not be applied. Nor shall any provisions governing the stay in the country of foreign nationals, including registration, be applied. Those personnel, however, shall not be considered as having the right of permanent residence in such country.

3. Personnel of the United Nations force and associated civilian personnel in fulfilling their duties shall be accorded the following privileges and immunities:

(a) Immunity from personal arrest or detention, as well as from any kind of legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) Exemption from taxes on salaries and remunerations received from the United Nations or from their home Government, as well as, exemption from all other direct taxes, except municipal ones for rendered services;

(c) Exemption from custom duties and charges for all private correspondence, money orders, printed materials and parcels sent or received by the personnel of the United Nations force and associated civilian personnel;

(d) Other privileges and immunities to be determined in the status-of-forces agreement on the basis of the provisions of article V of the Convention on the Privileges and Immunities of the United Nations of 1946.

Article 6

The right to carry arms

1. Military personnel and civilian police personnel shall have the right to have and carry arms and to use them in self-defence when fulfilling their functions mandated to them by the United Nations Security Council.

2. The type of arms and rules of engagement shall be determined by a specific provision in a mandate adopted for each United Nations peace-keeping operation by a resolution of the Security Council.

Article 7

Respect for the laws and regulations of the host country

1. Without prejudice to their privileges and immunities and the fulfilment of their duties, the personnel of the United Nations force and associated civilian personnel shall respect the laws and regulations of a State Party in whose territory the United Nations peace-keeping operation is conducted.

2. In case a crime is committed by a member of the personnel of the United Nations force and associated civilian personnel, the jurisdiction of the State of permanent citizenship shall apply.

PART III

OBLIGATIONS OF STATES PARTIES AND REPRESSION OF BREACHES OF THE CONVENTION

Article 8

Obligations of a State Party where the peace-keeping operation is conducted

1. A State Party in whose territory the United Nations peace-keeping operation is conducted undertakes to provide comprehensive support to the personnel of the United Nations force and associated civilian personnel in fulfilling their functions and to take all necessary measures to ensure respect for and guarantee the safety and security of those personnel.

2. The Government of a State Party in whose territory the United Nations peace-keeping operation is conducted shall guarantee the criminal prosecution of persons initiating hostile acts against the personnel of the United Nations force and associated civilian personnel. That Government shall act promptly and efficiently to deter, prosecute and punish all those responsible for attacks and other acts of violence against such personnel.

3. In the situation where the Government of a State Party in whose territory the United Nations peace-keeping operation is conducted is unable to exercise jurisdiction in order to ensure the safety and security of such personnel, it will fully cooperate with other States Parties in order to act collectively to ensure that persons responsible for carrying out authorizing or acquiescing in attacks and other acts of violence against the personnel of the United Nations force and associated civilian personnel are held responsible for international offences.

Article 9

Cooperation

In a situation of serious violations of the present Convention, the States Parties undertake to act, jointly or individually, in cooperation with the United Nations Security Council and in conformity with the Charter of the United Nations, including Chapter VII thereof.

Article 10

Breaches of the Convention

Attacks and other acts of violence, whether actual or threatened, against the personnel of the United Nations force and associated civilian personnel, including kidnapping, obstruction or detention of persons, shall be considered as criminal offences and will entail international responsibility in accordance with the present Convention and relevant norms of international law.

Article 11

Responsibility

A party to a conflict shall be responsible for the breaches of the present Convention committed by persons forming part of its armed forces, as well as by civilians under its control or jurisdiction.

Article 12

Right of self-defence of military personnel of the United Nations force

In case of grave violations of the provisions of the present Convention by armed forces or armed groups of a party to a conflict, military personnel of the United Nations force shall have the right to act in self-defence in accordance with the rules of engagement adopted for each peace-keeping operation, which may be widened or specified on the basis of a special decision taken by the United Nations Security Council.

Article 13

Recall of the United Nations personnel

If cases stipulated in article 10 continue to occur, a State Party whose personnel are engaged in the United Nations peace-keeping operation shall have the right to recall that personnel as not adequately protected.

Article 14

Compensation

In case of death, wounding or other injury of a member of the personnel of the United Nations force or associated civilian personnel or damage of equipment and technical means of the United Nations peace-keeping force, the United Nations shall pay compensation to the beneficiary upon the request of a State whose national is killed or injured or whose property and equipment are damaged. The amount of compensation shall be determined by the United Nations on the basis of a unified approach.

PART IV

FINAL PROVISIONS

Article 15

Signature

The present Convention shall be open for signature by all States.

Article 16

Ratification

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations, depositary of the present Convention.

Article 17

Accession

The present Convention shall be open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

Entry into force

The present Convention shall enter into force ___ days after ___ instruments of ratification or accession have been deposited with the Secretary-General of the United Nations.

Article 19

Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

Article 20

Authentic texts

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.